



# INDIGENOUS PEOPLES' ORGANIZATION (IPO)

## AUSTRALIA



31 March 2022

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships  
Aboriginal and Torres Strait Islander Partnerships  
Level 9, 1 William Street  
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Re: Proposed changes to the Cultural Heritage Acts (Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003).

The Indigenous Peoples' Organisation-Australia (IPO) is a national coalition of 300+ Aboriginal and Torres Strait Islander peak organisations, community organisations and individual members across Australia. The IPO was established to promote the rights of Indigenous Peoples at the regional, national and international levels. As a core part of this advocacy work the IPO supports the participation of Indigenous peoples at the United Nations and other relevant fora. The IPO operates through the direction of a national executive and is committed to the enactment of internationally recognised Indigenous rights within Australia.

The Indigenous Peoples Organization of Australia (IPO) writes to the Queensland Government regarding the current review of the *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld)(Cultural Heritage Acts). We welcome the Government's review of these Cultural Heritage Acts, as in their current iteration, they have failed to protect the cultural heritage and have disempowered Indigenous Custodians.

The IPO is particularly concerned that the rights of the Wangan and Jagalingou People have not been fully considered in decisions that relate to the Carmichael Coal Mine site. This letter strongly endorses the Wangan and Jagalingou People's submission to the Queensland government. In order to redress Indigenous disempowerment and provide broad protections to Queensland Indigenous Custodians, three key changes are needed to the Cultural Heritage Acts; these include:

1. Amending the definition of 'Aboriginal party' so that Traditional Owners with a cultural connection to Country are always involved in consultation and negotiation processes, regardless of their status as a native title party.
2. Create more extraordinary enforcement powers for First Nations so that we aren't reliant on the State to protect our cultural heritage if it is in imminent danger of harm or destruction.
3. Establish an independent First Nations-led decision-making body responsible for dispute resolution and mediation and assess the right people to speak for the country.

### **Queensland's laws currently fail to recognise the right people to speak for Country**

As many of you know, the Carmichael Coal Mine is located on ancestral Wangan and Jagalingou Country. Hundreds of artefacts have been found on the mine site and it is a record of the Wangan and Jagalingou People's occupation of the area and evidence the area has been used by the Wangan and Jagalingou people for thousands of years.

As there is significant cultural heritage on the mine site, the proponents of the mine, Bravus Mining and Resources (**Bravus**) were required to consult with the 'Aboriginal party' and enter into a Cultural Heritage Management Plan (**CHMP**) with them. The Cultural Heritage Acts currently rely on the

native title framework to determine who the 'Aboriginal party' is. This meant that Bravus only negotiated a CHMP with the native title party for the area, the Clermont-Belyando native title applicants.

Other Wangan and Jagalingou People who are not native title applicants were not consulted about the impact to their cultural heritage, even though they have cultural knowledge and responsibility for areas on the mine site and are the right people to speak for Country.

Under the CHMP, a Cultural Heritage Committee was appointed, who were meant to represent the interests and knowledge of the Traditional Owners for that Country. In practice, decisions about cultural heritage are being made by a select few individuals without consultation with the Traditional Owners for that Country.

The Cultural Heritage Acts have failed the Wangan and Jagalingou People. By relying on native title status to decide who the 'Aboriginal party' is, the Cultural Heritage Acts have excluded Wangan and Jagalingou People with cultural knowledge and connection to Country from participating in the protection and management of cultural heritage.

*The definition of 'Aboriginal party' in the Cultural Heritage Acts should be changed so that Aboriginal and Torres Strait Islander People with ancestral connections and particular knowledge about both tangible and intangible cultural heritage in an area are able to be recognised as a party and consulted on cultural heritage management and protection, regardless of whether there is already a native title party recognised for that area.*

### **Enforcement powers for Traditional Owners to protect our own cultural heritage**

Under the Cultural Heritage Acts, the Wangan and Jagalingou People had little to no ability to stop this recent destruction of their cultural heritage, leaving them overly reliant on the government to protect their cultural heritage.

This is due to the broad defences available to Bravus under the Acts and the high risk of adverse costs orders in seeking an injunction. The Queensland Government has subsequently refused to investigate whether the actions destroying their cultural heritage were legal, taking only the word of Bravus as to the legality of the destruction.

In October 2021, we understand that the Wangan and Jagalingou cultural heritage located on the Carmichael coal mine site was being destroyed. They wrote to the Minister for Aboriginal and Torres Strait Islander Partnerships requesting he exercise his power under section 32 of the Cultural

Heritage Act to issue a stop order to Bravus and prevent the carrying out of excavation works that were threatening our cultural heritage. It also requested that he investigate whether this activity breached the Cultural Heritage Acts.

Despite their concerns, a decision was made not to issue a stop order and not to investigate the allegations of offences under the Cultural Heritage Acts. Because of this, Bravus have been allowed to proceed with excavation works, potentially harming or destroying cultural heritage in the process. Not only did the State fail to act to protect our cultural heritage from harm, but also prevented Indigenous Custodians from seeking an injunction to stop the excavation because of the high costs of legal action.

*We need greater powers for Aboriginal and Torres Strait Islander People to prevent or seek redress for illegal impacts to our cultural heritage without high risks of adverse costs orders. The State should also provide financial assistance to Traditional Owners seeking to protect their cultural heritage under the law.*

## **Independent First Nations-led decision-making body needed**

An independent, First Nations-led body should be created that is responsible for managing and protecting cultural heritage in Queensland and to assist with resolving disputes in a way that is culturally competent and which avoids having to go to court.

A First Nations-led body could also be responsible for assessing and determining who the right people to speak for Country are. Currently, the Cultural Heritage Acts rely on native title to determine who should be consulted about cultural heritage. Having an independent, First Nations-led body responsible for determining who should be consulted would ensure that traditional owners with cultural knowledge and responsibility aren't excluded from consultation and negotiation, like the Wangan and Jagalingou People have been. This body could also assist with decisions on registering cultural heritage sites under the Act.

For too long Aboriginal and Torres Strait Islanders have had to rely on non-Indigenous bureaucrats or Ministers to protect our cultural heritage and to make decisions as to who is appropriate to speak for Country, often without cultural competency or sufficient knowledge of our culture to make these decisions.

*We need First Nations to be empowered to facilitate the protection of Country and the right Traditional Owners to speak for Country by introducing a new First Nations-led, independent body in Queensland.*

## **Conclusion**

The IPO supports the review of Queensland Cultural Heritage Acts. We welcome any measure that legislates the rights of Indigenous Custodians to speak for Country. We strongly endorse the submission made by the Wangan and Jagalingou People to this review.

We urge the Queensland Government to review and ensure its compliance with Section 28 of the Queensland Human Rights Act 2019, which says that:

1. Aboriginal people and Torres Strait Islander peoples hold distinct cultural rights.
2. Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community-
  - a. to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
  - b. to enjoy, maintain, control, protect and develop and use their language, including traditional cultural expression; and
  - c. to enjoy, maintain, control, protect and develop their kinship ties; and
  - d. to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
  - e. to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.
3. Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

Thank you for the opportunity to forward a submission on these critical cultural heritage concerns.

Yours Sincerely,

*Cathryn Eatock*

Co-Chair: Indigenous Peoples' Organisation-Australia